The writ of summons was headed "Between The Comptroller of Income Tax, Singapore, Plaintiff and X. Y. Defendant" and was signed at the foot "W. Gordon, Asst. Comptroller of Income Tax, Singapore, Plaintiff in Person". The Statement of Claim was signed in the same way i.e. "W. Gordon, Asst. Comptroller of Income Tax, Singapore, Plaintiff in Person."

It is contended on behalf of the appellant that the writ and the statement of claim should have been signed by the Comptroller of Income Tax in person.

Section 90 (1) of the Income Tax Ordinance (Cap. 166) reads as follows :—

"90.—(1) Subject to the provisions of section 85 of this Ordinance, tax may be sued for and recovered in a Court of competent jurisdiction by the Comptroller in his official name with full costs of suit from the person charged therewith as a debt due to the Crown."

Under the Rules of the Supreme Court a writ and a statement of claim must be signed either by the plaintiff's solicitor or by the plaintiff himself if, as in the present matter, he sues in person and the point for consideration is whether the signature by an Assistant Comptroller is protected by the definition of "Comptroller" contained in section 2 of the Ordinance, which reads as follows :—

"2. In this Ordinance, unless the subject or context otherwise requires—

'Comptroller' means the Comptroller appointed under section 5 of this Ordinance and includes, for all purposes of this Ordinance except the exercise of the powers conferred upon the Comptroller by sections 95, 96 and 99 of this Ordinance, a Deputy Comptroller or an Assistant Comptroller so appointed;".

With regard to section 90 (2) of the Ordinance which reads :—

"(2) The Comptroller may appear personally or by counsel in any suit instituted under this section",

it has already been decided in *The Comptroller of Income Tax, Singapore* v. *Dia Singh*[1] that the phrase "The Comptroller" includes a Deputy Comptroller or an Assistant Comptroller.

As the present matter is a suit instituted under section 90 (1) of the Income Tax Ordinance, I am of opinion that, provided the action is brought in the official name of the Comptroller, as was done in the present matter, the writ and statement of claim may properly be signed either by the Comptroller of Income Tax himself or by a Deputy Comptroller or an Assistant Comptroller.

I do not consider that the addition of the words "Plaintiff in Person" at the foot of Mr. Gordon's signature on the writ and on the statement of claim affects the position, as, to my mind, those words merely explain that the Assistant Comptroller is signing in his capacity as plaintiff, whose official name (in which the action must be brought) is the Comptroller of Income Tax, Singapore, as is correctly stated in the writ.

It seems to me that the decision in *The Comptroller of Income Tax, Singapore* v. *Dia Singh* in regard to section 4 of the Bankruptcy Ordinance is distinguishable in that in that case the petition was brought under the Bankruptcy Ordinance and not the Income Tax Ordinance and there is no provision in the Bankruptcy Ordinance analogous to that contained in the interpretation section of the Income Tax Ordinance relating to the definition of Comptroller.

For these reasons I am of opinion that the decision of the learned trial Judge was right and the appeal must therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *Elias Bros.; State Advocate-General.*

RAJARATNAM v. GUNN LAY TEIK & ANOR.

[C.A. (Thomson C.J., Good J.A. and Ismail Khan J.) March 3, 1961]

[K.L. — F.M. Civil Appeal No. 63 of 1960]

Landlord and tenant — Recovery of possession — Suitable alternative accommodation — Reasonableness — Control of Rent Ordinance, 1956, s.12(1)(n) — Rent control legislation — Intention.

Practice and Procedure — Appeal — Interference with findings of facts.

The respondent-landlords claimed possession of their premises from the appellant who had continued in occupation as statutory tenant after the determination of her tenancy. The premises in question were premises coming within the provisions of the Control of Rent Ordinance. The only issue for determination was whether or not the respondents had succeeded in establishing a case for recovery of possession under the provisions of section 12(1)(n) of the Ordinance. The respondents contended that they required the premises for the purposes of setting up a medical practice for their son. The appellant stated that although she had built on her own site close by to the premises in question a new building this was meant to be a nursing home and clinic and was unsuitable as a place for a general practitioner.

Held: (1) as the appellant was enriching herself by putting her own property for rent at uncontrolled rates while retaining rent-controlled premises for herself, it was reasonable for the Court to make the order prayed for;

(2) the appellant's own premises was even better suited for her purposes than the older one: the appellant would suffer no loss of goodwill by removing her practice to the new premises;

(3) therefore the Court was satisfied that suitable alternative accommodation was available to the tenant.

Per Ong J. in the Court below: "Rent control legislation is intended to protect tenants, and not merely to penalise landlords. . . . . I, for one, will not lend the assistance of the Court to any tenant abusing the provisions of the Control of Rent Ordinance for profiteering at the landlord's expense. . . . . Trafficking in houses by a tenant whether in her own name, or under the guise of a company incorporated with that object, should disentitle such tenant to any protection of the Control of Rent Ordinance."

Cases referred to:—

(1) *Cumming* v. *Danson* [1942] 2 All E.R. 653, 655.
(2) *Dixon* v. *Tommis* [1952] 1 All E.R. 725, 727.
(3) *Hardial Singh & Ors.* v. *Malayan Theatres Ltd.* [1953] M.L.J. 180.
(4) *Minet* v. *Johnson* 63 L.T.R. 507.
(5) *Shrimpton* v. *Rabbits* 131 L.T. 478 *per* Swift J., p. 479.
(6) *Williamson* v. *Pallant* 131 L.T. 474 *per* Swift J., p. 475.
(7) *Shreeve* v. *Hallam* [1950] W.N. 140 *per* Evershed M.R.
(8) *Warren* v. *Austen* [1947] 2 All E.R. 185 *per* Lord Greene M.R., p. 187F.
(9) *Chiverton* v. *Ede* [1921] 2 K.B. 30 *per* McCardie J., p. 45.
(10) *Rhodes* v. *Cornford* [1947] 2 All E.R. 601 *per* Evershed L.J., pp. 603F and 604A, B.
(11) *Creswell* v. *Hodgson* [1951] 2 K.B. 92 *per* Denning L.J., p. 97.
(12) *Hontestroon* v. *Sagaporack* [1927] A.C. 37.
(13) *Powell* v. *Streathan Manor Nursing Home* [1935] A.C. 243.
(14) *Watt* v. *Thomas* [1947] A.C. 484.
(15) *Bennax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

In the Court below the following judgment was delivered on November 22, 1960, —

Ong J.: The plaintiffs in this action, who are joint owners and landlords of premises No. 176 Batu Road, Kuala Lumpur, claim possession of the ground floor thereof from the defendant who has continued in occupation as statutory tenant after the determination of her tenancy on July 31, 1959. The said premises are premises coming within the provisions of the Control of Rent Ordinance, 1956.

The only issue for determination is whether or not the plaintiffs have succeeded in establishing a case for recovery of possession under the provisions of paragraph (n) of section 12(1) of the Ordinance. There was originally an additional ground put forward by the plaintiffs, under garagraph (f), but it was abandoned by counsel after I had indicated my view that it was untenable.

As regards the defence, Mr. Ramani has abandoned the plea of a new contractual tenancy created after July 31, 1960. It is only necessary, therefore, for me to decide this case with reference to paragraph (n).

The plaintiffs claim that they require the premises for their second son, a medical practitioner, and the genuineness of their intention to put him in possession of these premises is not challenged. I find as a fact that the plaintiffs did and do have a *bona fide* intention to make the premises available to their son, and that the latter's intention is to set up his practice there. The plaintiff's case is that, the defendant having built new premises only three doors away on the same street, it is reasonable that they should be allowed to recover possession of their own premises since the defendant has provided herself with suitable alternative accommodation.

The defendant admits having built her own premises on a site close to the said premises, but denied that her own premises "will be available for her to carry on the practice which is being carried on at No. 176 Batu Road, Kuala Lumpur." The evidence given by her husband, Dr. V. Rajaratnam, is to the effect that the new building was meant for a nursing home and clinic and, on that account, is unsuitable as a place where a general practitioner attends to patients calling there with a variety of illnesses which may include infectious diseases.

The law applicable is clear. A claim resting on the provisions of paragraph (n) must fulfil two conditions: first, that the Court considers it reasonable to make the order prayed for, and secondly, that the Court is satisfied that suitable alternative accommodation is available or will be available for the tenant when the order of judgment takes effect. Having heard the evidence given by the defendant's husband and attorney, and having had the advantage of viewing both the plaintiffs' and the defendant's own premises, I am satisfied that both conditions are fulfilled beyond any shadow of doubt.

In considering the question of reasonableness I am bearing in mind what Lord Greene M.R. said in *Cumming* v. *Danson*[1]:

> "In considering reasonableness under section 3(1) it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of hearing. That he must do in what I venture to call a broad common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation."

As against the plaintiffs it may be said that it is not absolutely essential that they should recover possession in order that their son should be able to establish a medical practice, since he is apparently well-occupied in Setapak and two other places. But having said that, I do not think there is anything more which can be said for denying to property-owners the right to make such use of their property as they please.

Rent Control legislation is intended to protect tenants, and not merely to penalise landlords. Sir Raymond Evershed M.R. has said in *Dixon* v. *Tommis*[2] that caution ought to be exercised by the Court in giving protection to what have been called "two-home men":

> "I venture to repeat that Judges ought to look somewhat critically at cases which, if repeatedly extended, would soon go far to defeat one of the main purposes of these Acts, which is to make the best use of the unfortunately limited housing resources."

In the instant case the defendant is, as she admits, the owner of new premises close to the site of the premises she wants to retain. Notice to determine her tenancy on July 31, 1959 was given on June 1, 1959. A certificate of fitness for occupation was issued to the defendant on November 5, 1959 upon the completion of her new premises. On October 30, 1959, the left front portion of these premises was let to Syed

Kareem & Co., dealers in patent medicines. On June 30, 1960, the front portion of the basement comprising an area of 840 sq. feet was leased to one Dr. Keshmahinder Singh, an ophthalmic surgeon, for a term of 5 years from July 1, 1960 at an annual rent of $3,600. The remainder of the building is retained by the defendant for her own use and occupation. Her husband and attorney admits that, were the portion retained not used as a nursing home, it would be entirely adequate for the use to which the plaintiffs' premises are put. He says: "The only reason I cannot use the premises for a dispensary is that I decided to use it for a nursing home."

My inspection of the two premises convinces me that the new building is in fact even better suited for the defendant's purposes than is the older one, which was the ordinary type of shop-house, whereas the defendant's own building was designed and planned for use as a dispensary and clinic in accordance with an express condition of the document of title. I do not think that the defendant's election, or her husband's, to use her premises for a nursing home, when it is entirely within their power to conduct their medical practice and dispensary there, is an adequate or sufficient reason for denying to the plaintiffs repossession of their own property. The defendant's premises are not available simply because of her own whim and fancy, and nothing more.

The design of the building in my opinion readily permits its concurrent user for a nursing home and for the dispensary and consultation rooms of a general medical practitioner, if so desired. The latter can be sited in self-contained units on the street level and the alleged risk of infection to maternity and surgical cases (of which there have been none in the so-called nursing home till the date of hearing) is entirely fictitious.

Speaking bluntly, it is only too clear that the defendant, or her husband, claims the protection of the Ordinance on no conceivable grounds of hardship, but only in order that they may continue to enrich themselves by putting out their property for rent at uncontrolled rates while retaining rent-controlled premises for themselves. I do not think their conduct and attitude at all reasonable, and I, for one, will not lend the assistance of the Court to any tenant abusing the provisions of the Control of Rent Ordinance for profiteering at the landlord's expense.

I have considered also the various other arguments presented by Mr. Ramani for the defendant before rejecting them. As I have already said, the defendant's own premises are entirely suitable. What Their Lordships of the Privy Council had said in *Hardial Singh & Ors.* v. *Malayan Theatres Ltd.*,[3] as to the suitability of the alternative accommodation has no application to the instant case. The defendant will suffer no loss of goodwill by her removal; on the contrary I am of opinion that the greater amenities and comforts available to patients in the new building should lead to an expansion in her practice.

I have used the expression "her practice" because the defendant Dr. (Mrs.) Irene Rajaratnam is nominally the tenant of No. 176 Batu Road. In fact, she has not practised there herself for more than three years past, since she left this country in June 1957, and is now engaged as *locum* to another doctor in Surrey. As a result of certain questions put by me to her husband, Dr. V. Rajaratnam, it was for the first time disclosed to the Court that a private limited company known as Leela Dispensary Limited had been incorporated in March 1958 with the objects of carrying on the business, *inter alia*, of chemists and druggists, and

> "To purchase or otherwise acquire for investment or resale, and to traffic in lands, houses, buildings, plantations, and immovable property of any tenure or any interest therein, and any movable property of any description or any interest therein, and to create, sell and deal in freehold and leasehold ground rents, and generally to acquire, deal in traffic by way of sale, lease, exchange, or otherwise with property of every description, whether immovable or movable, real or personal and whether for valuable consideration or not."

Trafficking in houses by a tenant whether in her own name, or under the guise of a company incorporated with that object, should disentitle such tenant to any protection by the Control of Rent Ordinance.

Arising out of the examination of this witness by the Court, there had been no further questions which counsel for either of the parties desired to put to him. Mr. Ramani then closed the case for the defendant, and upon the conclusion of his address, further hearing was adjourned till Saturday, November 5, for further argument, if any.

Upon the resumption of the hearing Mr. Ramani asked leave to call fresh evidence, arising out of the examination of Dr. V. Rajaratnam by the Court, on the ground that it was desired to correct mis-statements by the witness as to the sum of $50,000 which he said had been paid to his wife for the use of the premises. Mr. Peddie had no objection, and I allowed the application.

Mr. Ramani then called one S. Renganathan, auditor of Leela Dispensary Ltd. who produced the share register of the company showing that only 125 shares of $100 each had been issued out of an authorised capital of $100,000. He next produced the Minutes Book and referred to the 4th item in the minutes of the second meeting allegedly held on March 28, 1958, which reads as follows :

> "(4) **Noted:** That the tenancy for the business premises No. 176, Batu Road, Kuala Lumpur held by Dr. (Mrs.) I. Rajaretnam has been sub-let to the Company with effect from 6th March, 1958."

This witness went on to say that rents were entered in the accounts as expenses of the company, which paid $1,711.60 in 1958, and $1,534 in

1959. No direct reference was made in any way to any payments made to Dr. Irene Rajaratnam to explain how Dr. V. Rajaratnam had been under the impression that the company had paid $50,000 to his wife for the use of the premises, if no such payment in fact had ever been made.

Renganathan did not impress me at all as a witness worthy of credit. He alleged that he was present at both the first two meetings of the company. His attendance was in fact recorded only in the minutes of the first meeting, but was omitted from the minutes of the second meeting, although he admitted that it was usual for an auditor's attendance to be noted in the minutes, and all those minutes were typed by himself from notes made by Fernandez, the Secretary, and the Secretary's attendance was duly recorded. He asserted positively that whatever was discussed at the second meeting was recorded in the minutes, yet of the fact that an air-conditioned room was, to his own knowledge, retained by Dr. (Mrs.) Rajaratnam for her own use, there was not a word in the minutes.

Again, he said "I assisted in the formation of the company. For income tax purposes they wanted a limited company to take over the partnership assets. *Both doctors were practising there.*" The last statement could not be true as Dr. Irene Rajaratnam had gone to England nine months before the company was formed.

In the light of his evidence, I am of opinion that this witness, Renganathan, though called ostensibly and avowedly for the purpose of correcting an error said to have been made by Dr. V. Rajaratnam and arising *ex improviso* out of his examination by the Court, was in truth called with the object of delaying or defeating the plaintiffs' claim to possession by asserting the existence of a sub-tenancy granted to the company.

I think the question of a sub-tenancy is raised only as an after thought. I doubt that there was any second meeting on 28th March 1958, only 11 days after the first meeting on March 17, 1958. Article 13 of the Articles of Association provides for a meeting to be held at least once in every calendar year, not being more than 15 months after the last preceding meeting, and none was held in 1959. Between March 28, 1958 and May 1, 1960 there was no meeting.

If there was any sub-letting to the company by the defendant as alleged, then I find it entirely inexplicable why the company's governing director, who is at the same time the tenant's husband and attorney, should have taken no steps to intervene in the action, as undoubtedly he should have done: see *Minet* v. *Johnson*[4]. The existence of the company was a fact known to his solicitors. When it was first disclosed to the Court that the defendant and her husband had formed a company, and I asked for the Memorandum and Articles of Association, the same were instantly produced from the file of the defendant's advocates and solicitors. Dr. V. Rajaratnam himself was less than candid to the Court and his evidence about planning permission being necessary to set up a dispensary in the defendant's premises was false to his own knowledge and deliberately misleading. He too is a witness unworthy of credit. I am of the opinion that there never had been any sub-letting in fact, and that at all times the company was in occupation merely as licensee of the defendant. No question therefore arises under section 19 of the Ordinance. The company, in any event, is only the *alter ego* of the defendant and her husband, no better entitled to remain in possession than the defendant herself.

I accordingly give judgment for the plaintiffs and order that vacant possession of the ground floor of premises No. 176 Batu Road, Kuala Lumpur be delivered up to the plaintiffs by February 28, 1961. Such date gives the defendant more than ample time to make all necessary arrangements for removal to her own premises. The rent in arrear, at $118 per month, if still unpaid, is to be paid to plaintiffs up to the date of this judgment, and monthly thereafter till vacant possession is given to the plaintiffs. The plaintiffs will have the costs of this action, as taxed on the lower scale.

The defendant appealed.

COURT OF APPEAL.

R. Ramani for the appellant.

P. J. Mooney for the respondents.

Good J.A. (with whom **Thomson C.J.** and **Ismail Khan J.** agreed): This is an appeal from a judgment of Ong J. in the High Court at Kuala Lumpur, by which the respondents were given an order for possession of a building known as No. 176 Batu Road, standing on land held under Certificate of Title 11143, Lot 13, Section 39, Kuala Lumpur, of which they are the joint registered owners.

The appellant is a medical practitioner who at the date of the proceedings was practising in England. Her husband is also a medical practitioner, carrying on practice in an institution known as the Leela Dispensary at 176 Batu Road, in which the appellant herself carried on practice before going to England. It is common ground on the pleadings that the appellant was the tenant of 176 Batu Road under a monthly tenancy from the respondents, which the respondents purported to determine by notice to quit dated the 1st June, 1959 and expiring on the 31st July, 1959, and that the premises are subject to the Control of Rent Ordinance, 1956.

The respondents claim that they require the premises for occupation by their son who is a medical practitioner, and the action in the High Court proceeded for a part of the way as an application for an order for recovery of possession on the grounds set out in paragraph (f) of section 12(1) of the Ordinance, but that

ground of claim was abandoned in the course of the hearing and thereafter the action was treated as an application under paragraph (n) of section 12(1) and on that basis was decided in favour of the respondents.

In determining the issue between landlord and tenant in a case falling under paragraph (n), the Court has to ask itself two questions :

(a) does the Court consider it reasonable that an order for the recovery of possession of the premises should be made in favour of the landlord, and

(b) is the Court satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect?

The facts in respect of which these two questions had to be answered in the present case are as follows :—

On the respondents' side, it had long been their intention to make the premises available for their son, Dr. Gunn Chit Chan, when he qualified as a doctor. He returned to Malaya, having obtained his medical qualifications in England, in October, 1958, and two or three months later set up in practice at Setapak. His father, the first respondent, was High Commissioner for the Federation of Malaya in Australia from July 1957 until June 1960, and during that time another son, Mr. Gunn Chit Tuan, managed the first respondent's property under a power of attorney. Some time in 1959 (the exact date was not given in evidence) the first respondent instructed his son Mr. Gunn Chit Tuan to take steps to recover possession of the premises for Dr. Gunn Chit Chan's occupation, and as a result the notice to quit was issued.

At the time of the hearing, Dr. Gunn Chit Chan's position, with regard to the carrying on of his professional practice, was this: He had a practice in Setapak, three miles from the centre of Kuala Lumpur, which he attended from 9 a.m. to noon daily; he had a single room in partnership with a Dr. Khoo, on the first floor of a building in Cross Street, Kuala Lumpur, which, however, he considers to be "highly unsuitable" on the grounds that the building has no lift, it is very noisy, there is a lack of parking facilities, the rent is comparatively high, and as the premises are not subject to the Control of Rent Ordinance he is liable to have to vacate them at any time; and he had premises in Petaling Jaya, also in partnership with Dr. Khoo. Assuming that he obtains possession of 176 Batu Road, his intention is to concentrate the whole of his practice there, to give up the premises in Cross Street, and to leave Petaling Jaya to Dr. Khoo (whether in partnership or not is not stated, and is immaterial). It was not stated in evidence, but it was pointed out by Mr. Mooney for the respondents and on reflection it is obvious, that from the point of view of convenience a practice concentrated in Batu Road, in the heart of the town, is more desirable than a practice stretching from Petaling Jaya in the West to Setapak in the East, a distance of at least ten miles.

This is a fact to which it is proper to give due weight in considering the question of reasonableness.

On the appellant's side, there is evidence of the construction of a new building for the appellant about six lots away from 176 Batu Road, and on the same side of the road, which was ready for occupation in November 1959. It was on hearing that this new building was under construction that the respondent's attorney, Mr. Gunn Chit Tuan, considered that the time was ripe to take steps for the recovery of No. 176. The land for the new building was leased to the appellant by the Ruler in Council for a term of 60 years in 1954, subject to an express condition that she should build thereon within two years (subsequently extended by three years) a dispensary and clinic.

A certain amount of confusion surrounds the operations connected with the planning, building and launching of the new enterprise at 188 Batu Road because, although the appellant is the registered owner of the land, it was her husband who took all the necessary steps, applied for the necessary permits, and caused the necessary plans to be prepared after the appellant went to England in June 1957. The plans of the building were not ready until August 1958. The appellant's husband had applied for planning permission for "open commercial user" — that is to say, shops — in the front portion of the building facing Batu Road, with a nursing home at the rear. The pecuniary advantages of such an arrangement are obvious, but permission was refused.

The appellant's husband was cross-examined at some considerable length on the question whether he was entitled to use the building, or any part of the building, as a nursing home, in view of the express condition of the lease that the lessee may not use any building erected on the land for any purpose other than that of a dispensary and clinic. The appellant's husband said in evidence :

"I applied for planning permission for commercial use as I did not have enough funds to build a *clinic and nursing home.*"

Prima facie, this would seem to imply that in his view a clinic and a nursing home are two different kinds of establishment. On the other hand, a statement which he made earlier in his evidence,

".....in my opinion a clinic includes a nursing home or private hospital."

suggests that when he spoke of "a clinic and nursing home" he was using two tautologous synonyms to describe one and the same establishment.

In the appeal before us, Mr. Mooney for the respondents placed, if I may be permitted to say

so without intending to criticise his admirably lucid argument, what seemed to me excessive emphasis on the fact that the appellant's husband has established a nursing home in part of the new premises, thereby committing a breach of condition 2 of the lease and thus aggravating the unreasonableness of the appellant's refusal to vacate No. 176.

I do not know — and have no means of knowing, for the context does not help — what the Ruler in Council had in mind when he restricted the user of any building on the land to a dispensary and clinic. "Dispensary" means, primarily, a place where anything is dispensed, but in the context of medical practice it has come to mean a place where patients are examined by a doctor and given medicines for their ailments without being admitted as in-patients. "Clinic" is sometimes used in the same sense, and is often applied to a place where a doctor examines and treats patients for a particular condition or ailment, as in an ante-natal clinic, an eye clinic, a V. D. clinic. In this sense, it usually means a place where outpatients are examined and treated, but there are well-known "clinics" — so well-known that I would have no hesitation in taking judicial notice of their existence — which are in reality private hospitals or nursing homes such as the Mayo Clinic in the United States and the London Clinic; and I cannot rid my mind of the knowledge that members of my own family have been bed-patients in the Burlington Clinic in Dublin. Mr. Ramani for the appellant pointed out that the word is derived from the Greek word meaning a bed, and that one of the meanings assigned to it in *Chambers Twentieth Century Dictionary* is "a private hospital or nursing home". I would therefore hold that in the absence of a definition clarifying the meaning assigned to the word "clinic" in the lease it may be taken to bear either or both of its generally accepted meanings, and to include both premises where outpatients are examined and treated and premises where beds and nursing are provided for in-patients.

In the foregoing discussion I have referred to the user of *a part of* the appellant's new building as a nursing home. This is because two other parts of the building are not in fact occupied by the appellant's husband. Part of the ground floor, with a frontage on Batu Road, is occupied by one K. M. Abdul Kareem, a dealer in patent medicines (but not a dispensing chemist). This convenient and no doubt lucrative arrangement does not arise from any written sub-lease or agreement of sub-tenancy. The appellant's husband says :

"I gave a portion to K.M. Abdul Kareem because he had asked me long before the building was constructed. I gave him no agreement or lease.....I would use Abdul Kareem's space for extra beds in my nursing home. Ante-natal clinic and waiting room is on the other side of the ground floor to Abdul Kareem's. There are 12 beds at present — excluding space in Kareem's for 3 more."

Abdul Kareem says :

"I am a tenant. I rented from Dr. Rajaratnam. I have no written lease..... Dr. Rajaratnam told me that when his nursing home was ready, I should vacate the premises."

Abdul Kareem, not unnaturally, has carefully avoided committing himself to any admission that he will vacate the premises when required to do so. It would appear (but we are not called upon to decide the point in these proceedings), that he cannot claim the protection of the Control of Rent Ordinance, and that the space occupied by him can be made available for the appellant's use at any time. In area it is, on figures given in evidence by the appellant's husband, between one quarter and one third of the accommodation at present occupied by the appellant's husband in No. 176.

In addition to the ground floor space in No. 188 occupied by Abdul Kareem and by the appellant's husband for the purpose of his ante-natal clinic, waiting room and nursing home, there is a basement the front portion of which is sub-let by the appellant to an ophthalmologist Dr. Keshmahinder Singh, for a term of 5 years from the 1st July, 1960. There is no partnership agreement between Dr. Keshmahinder Singh and the appellant's husband; they carry on separate practices in the same building, but they work in with one another, no doubt to their mutual advantage, in the sense that the appellant's husband provides accommodation in his nursing home for Dr. Keshmahinder Singh's patients who need treatment and nursing in bed, or what is nowadays known as "hospitalisation." The total area of the basement, as shown by the measurements on the plan annexed to the sub-lease, is more than 2,000 square feet, of which an area of about 840 square feet is occupied by Dr. Keshmahinder Singh. The remainder of the basement consists of a consulting room, waiting room, changing room, rest room, dispenser's room and lavatories forming part of the premises used in connection with the nursing home carried on by the appellant's husband.

The conflict between the parties now becomes clear. The appellant's case, as stated by her husband, is that it never was her intention to give up that part of the practice which is carried on in 176 Batu Road, or to transfer it to No. 188 when the new building was completed. The new building was to house a nursing home, a completely separate establishment from the dispensary at No. 176. Part of the basement of the new building is not available to her and the remainder is fully taken up by the demands of the nursing home, except the part occupied by Abdul Kareem which may at any time be used for extending the accommodation of the nursing home. The premises at No. 176 continue to be required for the purposes of an outpatients' clinic in connection with the appellant's husband's normal professional practice.

The respondent's answer to that is: You have your new building, which is entirely suitable for the purposes of your practice as carried on hitherto, and which involves no loss of goodwill because it is only a few doors away from the old premises. If you choose to let part of the new building to another doctor and part of it to a shopkeeper, and if you choose to turn the remainder of it into a nursing home, that is no reason why our son should be deprived of the use of our building, which he needs for the purposes of his practice and which we have always intended to put at his disposal when he qualified.

The learned trial Judge carefully considered all these matters. He visited both premises and formed the opinion that the design of the new building readily permitted its concurrent user for a nursing home and for the dispensary and consultation rooms of a general medical practice, if so desired. In other words, he found that suitable alternative accommodation was available for the tenant.

On the question of reasonableness, he expressed himself, with what I, speaking for myself, would in the circumstances regard as justifiable forcefulness, in the following words which appear at page 55 (p. 201 *supra*):

> "Speaking bluntly, it is only too clear that the defendant, or her husband, claims the protection of the Ordinance on no conceivable grounds of hardship, but only in order that they may continue to enrich themselves by putting out their property for rent at uncontrolled rates while retaining rent-controlled premises for themselves. I do not think their conduct and attitude at all reasonable, and I, for one, will not lend the assistance of the Court to any tenant abusing the provisions of the Control of Rent Ordinance for profiteering at the landlord's expense."

In other words, while he did not in terms state that he considered it reasonable that an order for recovery of possession should be made in favour of the respondents, he left no room for doubt that he considered that it would be unreasonable to refuse to make the order, which comes to the same result.

Mr. Ramani criticised the learned trial Judge's approach to the question of reasonableness, and stated that his main attack on the judgment was in respect of the following passage at pages 53 — 54 (p. 200 *supra*):

> "As against the plaintiffs it may be said that it is not absolutely essential that they should recover possession in order that their son should be able to establish a medical practice, since he is apparently well-occupied in Setapak and two other places. But having said that, I do not think there is anything more which can be said for denying to property-owners the right to make such use of their property as they please."

Mr. Ramani went on to say with reference to this passage:

> "The question is not whether the defendant's position is reasonable or not; it is whether the Court considers it reasonable that the order should be made."

In the passage which I have already quoted on page 55, the learned trial Judge said "I do not think their (i.e. the appellant and her husband's) conduct and attitude at all reasonable." But he had already clearly demonstrated that he understood perfectly the relevant requirements of the Ordinance, when he said, at page 53,

> "A claim resting on the provisions of paragraph (n) must fulfil two conditions; first, that the Court considers it reasonable to make the order prayed for, and secondly, that the Court is satisfied that suitable alternative accommodation is available.....", etc.;

to which he added:

> "Having heard the evidence given by the defendant's husband and attorney, and having had the advantage of viewing both the plaintiffs' and the defendant's own premises, I am satisfied that both conditions are fulfilled beyond any shadow of doubt."

Mr. Ramani, in a close and careful analysis of the judgment, invited this Court to say that the learned trial Judge had confused the question of unreasonableness in the conduct of the tenant with the question whether it was reasonable for the Court to make the order asked for by the landlord. Mr. Ramani's submissions may be summarised as follows:

> The test of what is reasonable on the part of a party is different from the test by which a Court should decide what is reasonable. *Shrimpton* v. *Rabbits.* (5)
>
> Because it is found that the premises are reasonably required by the landlord for occupation as a residence for himself it does not necessarily follow that it is reasonable for a Court to grant the landlord's application for possession as against the tenant. *Williamson* v. *Pallant.* (6)
>
> Hardship to the tenant is an essential element. *Shreeve* v. *Hallam.* (7)
>
> In considering reasonableness the duty of the Judge is to take into account all relevant circumstances. *Cumming* v. *Danson.* (1)
>
> The Court has to find two separate matters. A finding on one does not necessarily involve a finding on the other. Availability of suitable alternative accommodation does not necessarily make it reasonable to make an order for possession. *Warren* v. *Austen.* (8)
>
> The learned trial Judge suffered from confusion of thought between availability of alternative accommodation and reasonableness. Even after finding as a fact that suitable alternative accommodation was available, he should have considered the reasonableness of making the order in the light of all the relevant circumstances. *Chiverton* v. *Ede,* (9) *Rhodes* v. *Cornford,* (10) *Creswell* v. *Hodgson.* (11)

While I fully endorse, with respect, all Mr. Ramani's propositions of law, distilled from the numerous authorities which he cited, I must confess that I am unable to see in what respect the learned trial Judge erred in applying the established principles to the facts of this case or in what respect his approach to the two questions which he had to decide is open to criticism. Taking the second question first, he inspected both premises, and found as a fact that the appellant's new building at 188 Batu Road offered suitable alternative accommodation for the carrying on of appellant's husband's dispensary practice concurrently with the running of a nursing home. But it was not, as Mr. Ramani seemed to imply, on that ground alone that the learned trial Judge considered it reasonable to make an order for possession of No. 176

in favour of the respondents. He took into consideration the fact that the appellant claimed the protection of the Ordinance on no conceivable grounds of hardship, but only in order that she, and her husband, might continue to enrich themselves by putting out their property for rent at uncontrolled rates while retaining rent-controlled premises for themselves. He observed that the appellant's new building is even better suited for her purposes than the older one, having been designed and planned for use as a dispensary and clinic, and he did not consider that the appellant's, or her husband's election to use her own premises for a nursing home, when it was entirely within their power to conduct their medical practice there, was an adequate or sufficient reason for denying to the respondents repossession of their own property. He took into consideration that she would suffer no loss of goodwill by removing the practice to the new premises. He found as a fact that the respondents had a *bona fide* intention to make their premises at No. 176 available to their son that it was his intention to set up his practice there.

In view of these findings, I am unable to see in what respect the learned trial Judge failed in his duty to take into account all the relevant circumstances on the question of reasonableness. He appears to me to have given very careful consideration to the circumstances put forward in support of their claims by both parties to the action.

The principles by which an Appellate Court is to be guided in deciding whether to interfere, or to refuse to interfere, with findings of fact in the Court below, have been discussed many times in this Court, and the well-known line of authorities, *Hontestroon (owners)* v. *Sagaporack (owners)*[12], *Powell* v. *Streathan Manor Nursing Home*[13], *Watt* v. *Thomas*[14], and *Benmax* v. *Austin Motor Co. Ltd.*[15] was considered in the judgment of this Court last year in the unreported case of *Govindasamy* v. *Shafii bin Shahid (F. M. Civil Appeal No. 19 of 1959)*. I do not think it necessary to cite once again *verbatim* passages from these cases; it is sufficient to say that in my opinion no grounds have been put forward by the appellant in this appeal which would justify this Court in saying that the learned trial Judge's findings of fact should not be accepted because he has not taken proper advantage of having seen and heard the witnesses and inspected the premises, or because he has given unsatisfactory reasons for his findings of fact, or because he has drawn palpably erroneous or insupportable inferences from those findings.

There is one matter still outstanding, to which the learned trial Judge devoted his attention in the latter part of his judgment, but to which only a brief reference need be made for the purposes of this appeal. On the 6th March, 1958, a company named "Leela Dispensary Limited" was incorporated in the Federation of Malaya. The subscribers to the Memorandum of Association were V. Rajaratnam, of 10 Parry Lane, Kuala Lumpur, Medical Practitioner (the appellant's husband) and I. Rajaratnam, of 31 Ottways Lane, Ashtead, Surrey, Medical Practitioner (the appellant). The share capital of the Company is stated in the Memorandum to be $100,000 divided into 1,000 ordinary shares of $100 each. The register of shares shows that the issued capital is $12,500, of which the appellant and her husband are the registered holders of 25 shares each, while 15 shares each are held by five persons, all described as "students", all bearing the name Rajaratnam, and all described by the appellant's husband in his evidence as "the children" and stated by him to be minors. The minute book shows that since the Company was incorporated three meetings of the Board of Directors have been held, one on the 17th March, 1958, one on the 28th March, 1958 and one on the 1st May, 1960, at which meetings only two persons were present: Dr. V. Rajaratnam, as Governing Director and Mr. P. L. Fernandez (in attendance) as Secretary. Paragraph 4 of the minutes of the second meeting reads :

> "**Noted:** That the tenancy of the business premises No. 176, Batu Road, Kuala Lumpur held by Dr. (Mrs.) I. Rajaretnam (*sic*) has been sub-let to the company with effect from 6th March, 1958."

The existence of this Company was disclosed for the first time at the end of Dr. V. Rajaratnam's evidence, in answer to questions by the Court. His evidence of the sub-letting was as follows :

> " Mrs. Irene Rajaratnam (defendant) has the tenancy. She holds it for the benefit of Leela Dispensary Ltd.
>
> I cannot say what figure the company paid to my wife for the use of the premises. I think it was $50,000."

After submissions had been made on behalf of the defendant, leave was granted to the defence to call additional evidence. A member of a firm of Auditors, Mr. S. Renganathan who described himself as auditor of Leela Dispensary Limited testified that "The sub-letting was done to enable the limited Company to carry on practice 'as dealers of medicines' "; and "Rent of 176 Batu Road was paid on behalf of Mrs. Rajaratnam by the Company."

This was the only evidence of a sub-letting by the appellant to the Company, and the learned trial Judge did not believe it. He said :

> " I think the question of a sub-tenancy is raised only as an afterthought..... I am of the opinion that there never had been any sub-letting in fact, and that at all times the company was in occupation merely as licensee of the defendant."

The question, however, is not one that this Court is called upon to resolve in the present proceedings and I do not feel called upon to express any opinion on it.

I would dismiss this appeal, with costs to the respondents in this Court and in the Court below.

Appeal dismissed.

Solicitors: *Braddell & Ramani; Bannon & Bailey.*

LOW TAN v. TIPALDO

[A.C.J. (Chua J.) March 7, 1961]

[Singapore — District Court Appeal No. 27 of 1960]

Practice and Procedure — District Judge's grounds of decision — Material circumstances not mentioned in judgment — Whether misdirection in law.

Landlord and tenant — Recovery of possession — Comparative hardship — Control of Rent Ordinance (Cap. 242), s.15(1)(j).

This was an appeal by a tenant from the decision of a District Judge who granted to the owner an order for recovery of possession. Two matters arose namely the question of comparative hardship under the proviso to section 15(1)(j), and as to whether the District Judge had misdirected himself in law in that he had failed to consider all the material circumstances of the case as he was bound to do under the said section.

Held: (1) that the burden of proof was on the appellant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it — in this case the appellant was unable to do so;

(2) there was no misdirection on the part of the District Judge. Just because the District Judge did not set out the material circumstances in his grounds of decision did not mean that he had not taken all the relevant circumstances into consideration.

Cases referred to:—

(1) *T.A.M. Abdul Aziz & Co.* v. *Shamsudeen Mohamed John* [1951] M.L.J. 141.

(2) *Thakurdas Kessamall* v. *Wassiamull Assomull & Co.* [1951] M.L.J. 219.

DISTRICT COURT APPEAL.

E. W. Barker for the appellant.

C. H. Smith for the respondent.

Chua J.: This is an appeal, by the tenant (the appellant) of No. 56 Cairnhill Road, from the decision of a District Judge who granted to the landlord (the respondent), who was the owner, an order for recovery of possession of the house. The claim of the landlord was based on section 15(1)(j) of the Control of Rent Ordinance (Cap. 242) namely that the landlord reasonably required the house for occupation by himself.

The only question before this Court is the question of comparative hardship under the proviso of section 15(1)(j). The burden of proof was on the appellant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it. The District Judge found that the appellant was unable to show that greater hardship would be caused by granting the order.

The main ground of appeal is that the District Judge had misdirected himself in law in that he failed to consider all the material circumstances of the case as he was bound to do under section 15(1)(j). The learned counsel for the appellant enumerated six material circumstances which he said had not been taken into consideration by the District Judge. His argument was that the six material circumstances were not mentioned in the grounds of decision of the District Judge and therefore the District Judge could not have taken them into consideration.

I am unable to agree with the argument of learned counsel for the appellant. Just because the District Judge did not set out all the material circumstances in his grounds of decision, it does not mean that he had not taken all these circumstances into consideration. It was the duty of the District Judge to consider all the material circumstances and he took time to consider his decision. I have no doubt that he must have directed his mind to the six material circumstances mentioned by the learned counsel for the appellant. There is nothing to indicate that the District Judge had disregarded any part of the appellant's case.

It cannot be denied that there was evidence before the District Judge of hardship on the respondent and on the appellant and the District Judge decided that the appellant had not satisfied him that the granting of the order would cause greater hardship than by refusing it. I consider that there were grounds on which he could come to this conclusion. Applying the ruling of the Court of Appeal in Singapore *T. A. M. Abdul Aziz and Co.* v. *Shamsudeen Mohamed John*[1] and in *Thakurdas Kessamall* v. *Wassiamull Assomull & Co.*[2] this Court should not disturb this finding of the District Judge.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee; Laycock & Ong.*

LEE KIM SWEE v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A) March 21, 1961]

[K.L. — F.M. Criminal Appeal No. 4 of 1961]

Criminal Procedure — Appeal against conviction for murder — Attack on verdict of jury — Onus on appellant — Penal Code, s.302.

The onus that lies on an appellant who seeks to attack the verdict of the jury is not just to show that the verdict is against the weight of evidence: what he must show is that it is unreasonable or cannot be supported having regard to the evidence.

COURT OF APPEAL (CRIMINAL).

Eugene Lye for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): The appellant was convicted for murder in contravention of section 302 of the Penal Code and was sentenced to death. He has now appealed against his conviction.

The allegation against the appellant was that on 10th September, 1960, at about 2 o'clock in the morning somewhere between Pontian and Johore Bahru he murdered one Wong Yoke. Briefly, the case for the prosecution was that the appellant had some sort of trouble with the